

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 04-0265
Indiana Individual Income Tax
For 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Involuntary Servitude – Indiana Adjusted Gross Income Tax.

Authority: U.S. Const. amend. XIII; United States v. Drefke, 707 F.2d 978 (8th Cir. 1983); Ginter v. Southern, 644 F.2d 1226 (8th Cir. 1979); Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972); Porth v. Brodrick, 214 F.2d 925 (10th Cir. 1954).

Taxpayer maintains that requiring him to pay state income tax constitutes “involuntary servitude” in violation of U.S. Const. amend. XIII.

II. Citizenship.

Authority: 26 U.S.C.S. § 7701(a)(14); United States v. Collins, 920 F.2d 619 (10th Cir. 1990); In re Becraft, 885 F.2d 547 (9th Cir. 1989); United States v. Ward, 833 F.2d 1538 (11th Cir. 1987).

Taxpayer argues that he is not required to pay federal or state income taxes because he is a “nonresident alien” and a “national of the United States.”

III. Applicability of the State Adjusted Gross Income Tax.

Authority: 26 U.S.C.S. § 7701(a)(1); 26 U.S.C.S. § 7701(a)(14); United States v. Karlin, 785 F.2d 90 (3d Cir. 1986); United States v. Studley, 783 F.2d 934 (9th Cir. 1986); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985)

Taxpayer argues that he is not a “person” required to report his income for federal or state income tax purposes.

IV. State Income Tax Liability.

Authority: IC 6-3-2-1(a); Black's Law Dictionary (7th ed. 1999).

Taxpayer maintains that there is nothing in Indiana law which makes him “liable” for paying income tax and that any tax payment made under Indiana law is a “donation.”

STATEMENT OF FACTS

The Department of Revenue (Department) determined that taxpayer owed additional state income taxes for 2001. Accordingly, notices of “Proposed Assessment” were sent to taxpayer at his out-of-state location. Taxpayer disagreed and sent a 15-page document outlining the basis for his disagreement. The Department treated the document as a protest of the 2001 assessment. Taxpayer was invited to participate in an administrative hearing and to further explain the basis for the protest. Taxpayer chose not to take part. This Letter of Findings is based upon the taxpayer’s protest letter.

This Letter of Findings refers to the petitioner as “taxpayer” a designation which taxpayer vigorously challenges. However, in the absence of a more suitable term, the Letter of Findings employs the term in its most generic sense and without any prejudice to the substance of taxpayer’s legal arguments.

DISCUSSION

I. Involuntary Servitude – Indiana Adjusted Gross Income Tax.

Taxpayer claims that imposition of the state’s adjusted gross income tax constitutes a form of involuntary servitude in violation of the U.S. Const. amend. XIII.

U.S. Const. amend. XIII provides that, “Neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States, or any place subject to their jurisdiction.”

The courts have uniformly rejected arguments that income tax is a form of “involuntary servitude” forbidden under U.S. Const. amend. XIII. “If the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment.” Porth v. Brodrick, 214 F.2d 925, 926 (10th Cir. 1954). *See also* United States v. Drefke, 707 F.2d 978, 983 (8th Cir. 1983); Ginter v. Southern, 644 F.2d 1226 (8th Cir. 1979); Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972).

The Department does not agree with taxpayer’s contention that imposition of the state’s income tax places taxpayer in bondage; the Department concludes that taxpayer’s argument is “clearly unsubstantial and without merit,” as well as “far-fetched and frivolous.” Porth, 214 F.2d at 926.

FINDING

Taxpayer’s protest is denied.

II. Citizenship.

Taxpayer maintains that only those persons living in the District of Columbia or on land ceded to the federal government are subject to federal income tax or – by extension – Indiana income tax. In support of that contention, taxpayer cites to 26 U.S.C.S. § 7701(a)(10) which states that, “The

term ‘State’ shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.”

The Internal Revenue Code imposes federal income tax upon all United States citizens and residents not simply those who reside in the District of Columbia, federal territories, and federal enclaves. United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990), *cert denied* 500 U.S. 920 (1991). “For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves.” *See also In re Becraft*, 885 F.2d 547, 549-50 (9th Cir. 1989); United States v. Ward, 833 F.2d 1538, 1539 (11th Cir. 1987), *cert denied*, 485 U.S. 1022 (1988).

Taxpayer’s reliance on 26 U.S.C.S. § 7701(a)(10) is misplaced; the cited provision means that the District of Columbia comes within the purview of the Internal Revenue Code. It does not mean that *only* residents of the District of Columbia are subject to the IRC. It is plain that the use of the term “include” within 26 U.S.C.S. § 7701(a)(1) is a term of enlargement not limitation, and the reference to the District of Columbia is not intended to exclude other jurisdictions.

FINDING

Taxpayer’s protest is denied.

III. Applicability of the State Adjusted Gross Income Tax.

Taxpayer argues that he is not a “person” required to report his income or to pay tax on that income. Taxpayer predicates this proposition on the ground that he is not subject to the provisions of the Internal Revenue Code (IRC). Taxpayer errs. The IRC clearly defines “persons” and sets out which persons are subject to federal taxes. 26 U.S.C.S. § 7701(a)(14) defines “taxpayer” as any person subject to any internal revenue tax. 26 U.S.C.S. § 7701(a)(1) defines a “person” as any individual, trust, estate, partnership, or corporation. Taxpayer’s argument that an individual – such as himself – is not a “person” within the meaning of the IRC has been uniformly rejected. In United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), the court affirmed the defendant’s conviction for failing to file income returns and rejected the defendant’s contention that he was “not a ‘person’ within the meaning of 26 U.S.C. § 7203” as “frivolous and require[ing] no discussion.” In United States v. Studley, 783 F.2d 934, 937 n.3 (9th Cir. 1986), the court affirmed defendant’s conviction for failing to file income tax returns on the ground that defendant was “an absolute freeborn, and natural individual” stating that “this argument has been consistently and thoroughly rejected by every branch of the government for decades.” “[A]rguments about who is a ‘person’ under the tax laws, the assertion that ‘wages are not income’, and maintaining that payment of taxes is a purely voluntary function do not comport with common sense - let alone the law.” McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (*Emphasis added*).

Taxpayer’s argument, that he is not a “person” subject to the IRC or to the Indiana individual income tax, does not warrant serious consideration.

FINDING

Taxpayer's protest is denied.

IV. State Income Tax Liability.

Taxpayer states that nothing in Indiana law makes him "liable" for paying Indiana income taxes. Taxpayer is mistaken. IC 6-3-2-1(a) states that, "Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is *imposed* upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every non-resident person." (*Emphasis added*). The word "impose" means "to levy or exact a tax or duty." Black's Law Dictionary 759 (7th ed. 1999); "levy" means the "imposition of a fine or tax." Id. at 919. As a matter of law and simple common sense, whether a tax is levied or imposed, the person against whom the levy is made is "liable" for that amount.

Taxpayer set out other objections to the "Proposed Assessment" citing authorities such as former President Taft, the Congressional Record, the Copyright Act, Restatement (Second) Contracts, and Saint Paul's second letter to the apostle Timothy. Notwithstanding taxpayer's reliance on historical, legal, and Biblical authority, the Department will not expend further resources attempting to discern or refute taxpayer's wholly frivolous arguments.

FINDING

Taxpayer's protest is denied.